IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 252 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PRITIN C VORA

Appearance:

Mr K C Shah, APP for Petitioner

Mr Jiten Buddhabhati for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/03/2001

ORAL JUDGEMENT

In this appeal, at the time of admission, notice was issued to and served upon the respondent-original accused. However, despite service of notice, the respondent has not appeared and therefore, I had requested Mr Jiten Buddhabhati, learned Advocate to assist the court. He had volunteered to do so. Therefore, I had an occasion to hear Mr K C Shah, learned

APP for the appellant and Mr Jiten Buddhabhati, learned Advocate appointed to assist the Court. The facts giving rise to the present appeal may be stated as follows:

2. The original complainant - Pujara Madhusudan Maganlal, Drug Inspector at Mehsana had taken a visit of the business premises of the respondent above named. Certain irregularities were noticed by him. Therefore, after following due procedure of rules and law, he filed a complaint on 13.6.1990 before the learned Chief Judicial Magistrate at Palanpur. The said complaint was registered as Criminal Case No.3544/90. After the complaint was registered, learned Magistrate passed an order for issue of summons against the respondent above named. It appears that the matter was adjourned from time to time. The plea of the respondent was recorded and the respondent had pleaded not guilty to the accusations against him on 5.4.1991 and, therefore, the matter was posted for recording evidence of the complainant. It seems that the matter was thereafter adjourned from time to time and ultimately it as adjourned to 2.12.1991. The proceeding of that date shows that the original complainant was not present before the court on that day. Therefore, the learned Magistrate passed order under section 256 of the Code of Criminal Procedure, 1973 (for short, 'the Code') and directed discharge of the respondent from the said charge. Feeling aggrieved by the said judgment and order of the trial court, the appellant-State of Gujarat has preferred this appeal before this court under section 378 of the said Code. It has been contended by the appellant that the matter was in fact adjourned on 28.11.1991 and the matter was then fixed for hearing on 3.12.1991. That when the original complainant went to the court on 3.12.1991, it was noticed that the complaint was dismissed for default on 2.12.1991. The appellant has maintained that the matter was actually fixed for hearing on 3.12.1991 and not on 2.12.1991 and, therefore, some error was there and hence the present appeal be allowed and the aforesaid order of dismissal of complaint and order of discharge of the respondent amounting to an order of his acquittal be set aside. As said above, the respondent was duly served but he did not appear. I have heard learned APP Mr K C Shah and Mr Jiten Buddhabhati. I have been taken through the record by the assistance of the learned Advocates. It is an admitted position that the matter was posted for hearing on 28.11.1991. The proceedings show that the original complainant was absent and the respondent was present. Therefore, the matter was adjourned according to the proceedings dated

28.11.1991 to 2.12.1991. The proceeding of 2.12.1991 shows that on that day the original complainant was called out on three occasions and he was found to be absent, even at 5.30 p.m., when the matter was last called out. Therefore, the aforesaid order of acquittal came to be recorded by the learned Magistrate.

3. It is the say of the original complainant that the matter was adjourned for recording evidence on 3.12.1991 and not on 2.12.1991. Any way, there appears to be some sort of misunderstanding on the part of the complainant in getting the date. But his contention that he actually appeared before the court on 3.12.1991 and learnt that the matter was dismissed for default on 2.12.1991, cannot be disputed, since there is no affidavit filed by the respondent on record controverting the said fact. Even otherwise, there appears to be some sort of misunderstanding on the part of the complainant.

4. It is also significant and relevant to note that even the respondent was also not present in the Court on 2.12.1991 when the complaint was dismissed. Therefore, parties should not suffer on account of technicalities and it is always just and proper to have the matter decided on merits rather than on technicalities. Under the circumstances, even the learned Advocate appearing to assist the Court also states that in such a matter, the best thing is to remand the matter to the court concerned for fresh trial according to law. In the aforesaid view of the matter, this is a fit case wherein the matter may be disposed of on merit and it can be done by remanding the matter and for the purpose, the acquittal order has to be set aside. Under the aforesaid facts and circumstances, this appeal is required to be allowed. The impugned judgment and order of the learned Chief Judicial Magistrate, Palanpur acquitting the respondent from the charge with which the complaint was filed against the respondent is required to be set aside and the matter has to be remanded to the trial court for trial according to law from the stage at which it was left. Considering the fact that the matter is very old, it would not be out of way to expect the court below to give due priority to the disposal of this old case.

4. With these observations, this appeal is allowed. The impugned judgment and order of the learned Chief Judicial Magistrate are set aside. The matter is remanded to the trial court for trial according to law. The office is directed to return the R & P of criminal

case no.3544/90 to the court concerned immediately.

22.3.2001 [D P Buch, J.]
msp